

# REQUEST FOR QUOTE

## Bus Shelters #03-4930i

### I. Introduction

#### A. Overview

Macon County is soliciting Quotes for qualified firms to design, fabricate, and deliver up to Four (4), standing seam hip roof passenger waiting shelters to include structural aluminum frames with glazed rear and side walls, roof assemblies, and all required hardware for installation. Shelters shall be computer designed and structurally engineered.

The shelter frame shall be designed to be stable with or without wall and roof glazing. All connections and glazing containment shall be tamper proof. Each shelter shall be prefabricated in modular wall sections and complete roofs, ready for field erection.

#### B. Scope

The Specification for this RFQ will be set out in **Attachment A** to this RFQ. Sketch of a similar product is set out in **Attachment B** to this RFQ.

#### C. Definitions

Purchase Award: A Purchase Order will be issued from Macon County to the Contractor.

County: Macon County will be referred to as County.

RFQ: This Request for Quotes: "Bus Shelters – 03-4930i"

Bidder: The Bidder (i.e. person, firm, company partnership or corporation) submitting a Quote in response to the Request for Quotes.

Quote: The Quote submitted by the Contractor in accordance with the requirements of this RFQ.

Contractor: The successful Bidder selected by Macon County to furnish the goods as defined in this Request for Quotes.

### II. Quote Requirements

All Quotes are subject to the provisions of this RFQ, special terms and condition specific to this RFQ, the specifications and the General Terms and Conditions.

Macon County objects to and will not evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the Quotes as part of the Bidder's response. Do not attach any additional terms and conditions. By execution and delivery of the Quote form the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

**A. Delivery Requirements:**

The County will receive Quotes by e-mail, fax, personal delivery, courier/delivery service or by U.S. Postal Service. An original and two copies of the Quote must be submitted to Lindsay McConnell, Purchasing Agent, by the time and date indicated below.

**Quotes will be received until 3:00 p.m. on January 24, 2013.**

<b>Delivered by E-mail</b>	<b>Delivered by Fax</b>
lmccconnell@maconnc.org	<b>828-349-2586</b>
<b>Delivered by US Postal Service</b>	<b>Delivered by Personal Delivery or Courier/Delivery Service</b>
Macon County Purchasing Agent Bus Shelter Quote# 03-4930i 5 W. Main St. Franklin, NC 28734	Macon County Purchasing Agent Bus Shelter Quote# 03-4930i 5 W. Main St. Franklin, NC 28734

No Quotes received after the date and hour set forth above will be accepted or considered. **Quotes sent by E-mail, Fax, or US Mail that are not received by Macon County by the deadline set forth above will not be considered.**

There is no expressed or implied obligation for the County to reimburse Bidders for any expenses incurred in preparing Quotes in response to this RFQ.

Quotes should be submitted on the Quote Form attached as **Attachment C** to this RFQ. Quotes submitted on forms other than the Quote Form will not be considered. The Quote Form should be signed by the responsible representative of the company submitting the Quote. Quote Forms that are not signed will not be considered.

## **B. Submission Requirements**

Bidder's submission must include all of the following:

1. Quote Form **Attachment C** (Price quotes must be submitted on the attached Quote Form)
2. Bidder's detailed specifications on the proposed items, including photos (prefer color photos)
3. Full warranty information
4. List of at least three customer references with whom Bidder has dealt with in the past year
5. Attachment F

Failure to respond to any of the requirements outlined in either the RFQ or the Quote Form or a failure to enclose or submit any of the required documents may disqualify the Quote.

## **III. Instructions**

### **A. Warranty Requirements**

At a minimum, the Quote shall include a one (1) year warranty in the Quote price(s). Extended warranty terms can be indicated in the Quote Form (**Attachment C**).

### **B. Modification and Withdrawal of Quotes**

Bidder may without prejudice, modify or withdraw its Quote by written request provided that such request is received by the County not later than 24 hours prior to the time and date that Quotes are due.

The County may request additional information or clarification from any or all Bidders. The County reserves the right to include as purchase award obligations any additional requirements that arise or result from purchase negotiations between the County and the Contractor.

### **C. Questions**

Any questions regarding this RFQ should be directed to Lindsay McConnell, Purchasing Agent. All questions must be submitted in writing, by 4:00 pm on January 16, 2013. Questions may be faxed to: Lindsay McConnell at 828-349-2586 or e-mailed to: [lmccconnell@maconnc.org](mailto:lmccconnell@maconnc.org) . Response to questions will be posted on the Macon County website: <http://www.maconnc.org/public-notices.html> by

4:00 pm on January 18, 2013. All parties who have interest in Quoting on the RFQ will need to check the website for question and answer updates and any addenda. Answers to questions or directives to Bidders regarding the Quote process by any County employee other than Ms. McConnell and verbal answers to questions are not binding on the County. If you would like email notification of website updates please request this by sending an email to Lindsay McConnell at [lmcconnell@maconnc.org](mailto:lmcconnell@maconnc.org).

**D. Discrepancies, Omissions and Additional Information**

Bidder is responsible for examining this RFQ and all addenda (if any). Failure to do so will be at the sole risk of Bidder. Should Bidder find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFQ, Bidder shall notify the County, in writing as set out in Paragraph C above, of such findings immediately. Should such matters remain unresolved by the County, Bidder should document the finding in writing prior to Bidder's preparation of its Quote and address such in Bidder's Quote.

**E. Quote Evaluation**

Quotes are requested on the items and/or equipment as hereinafter specified or like items similar in design, function and performance. The County reserves the right to reject any and all Quotes. Bidders are cautioned that any/all information furnished or not furnished on this Quote may be used as factor to determining the award of this Contract.

**F. Suitability for Intended Use**

Bidders are requested to offer only comparable equipment which will provide the equivalent capabilities, features and diversity called for herein. The County reserves the right to evaluate all Quotes for suitability for the required use and to award to the lowest responsive, responsible Bidder, taking into consideration quality, performance, and the time specified in the Quotes for performance of the contract [GS. 143-129].

**G. Specifications**

The attached specifications and requirements are drawn around particular equipment for the purpose of establishing the quality level desired. Bidders are requested to offer their units closest to the specifications that will perform the functions required. Bidders are cautioned that any deviation from specifications must be pointed out in their Quote.

**H. Deviations**

Any deviations from specifications and requirements herein must be clearly pointed out by Bidder. Otherwise it will be considered that item(s) offered is in strict compliance with these specifications and requirements, and successful Bidder will be held responsible therefore. Deviations must be explained in detail on an attached sheet. However, no implication is made by the County that deviations will be acceptable.

#### **I. Compliance with Laws**

The Bidder shall obtain and maintain all required licenses, permits, liability insurance, worker's compensation insurance and comply with any and all other standards or regulations required by federal state or County statute, ordinances and rules during the performance of the Purchase Award between the Bidder and the County. Any such requirement specifically set forth in the Purchase Award between the Bidder and the County shall be supplementary to this section and not in substitution thereof. The cost of said licenses, permits and insurance shall be included in the Bidder's unit price(s).

#### **J. Proprietary Information**

This RFQ and all Bidder responses are considered public information, except for trade secrets specifically identified in writing by the Bidder, which will be handled according to state statute or other laws. Any section of the Bidder's response package that is deemed to be a trade secret by the Bidder shall be submitted in a separate envelope clearly marked "**Trade Secret Information Do Not Disclose**".

The County will attempt to comply with a Bidder's designation of proprietary/confidential information. However, the County may not be able to withhold a record (data, document, etc.) or deny access to a record requested by an individual (the public) when an obligation is imposed upon the County under the public records laws of the State of North Carolina. The County's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the public records laws of the State of North Carolina.

### **IV. Information**

#### **A. Knowledge of RFQ**

Bidder shall make whatever arrangements are necessary to become fully informed regarding all circumstances and any other matters, which might, in any way, affect the cost of performance of the required work. Any failure to fully become

knowledgeable of any other matters, which might in any way affect the cost of goods purchased by the County, shall be at Bidder's sole risk.

**B. Quote Preparation Costs**

All costs of Quote preparation and any other pre-award costs shall be at Bidder's sole cost and expense. This RFQ is not to be construed as a commitment of any kind; nor does it commit the County to pay for costs incurred in the submission of a Quote or for any costs incurred prior to the execution of a Purchase Award.

**C. Purchase Award**

Please note that this RFQ does not constitute an offer but rather a request for Quotes from Bidders.

The County will award a Purchase Order to the Bidder with the lowest responsive, responsible Quote, taking into consideration quality, performance, and the time specified in the Quotes for performance of the contract [GS. 143-129]. The County reserves the right to reject any and all Quotes.

Due to grant funding schedule, the Bidder selected shall understand and agree that completion and delivery of shelters and benches shall occur no later than March 15, 2013.

**D. Bidder Selection Schedule**

The County intends to proceed with the Bidder selection process and Purchase Order award with due diligence. A tentative schedule for Bidder selection has been included as Section VI of this RFQ for reference only and is subject to change.

**E. Conflicts of Interest**

The County has adopted a Code of Conduct that establishes standards of conduct and conflicts of interest.

Throughout the selection process and subsequent Purchase Award negotiations, Bidder shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the selection process or the contract negotiations, with the County Commission or County employees other than Lindsay McConnell, Purchasing Agent (lmcconnell@maconnnc.org).

**F. Quotes for All or Part**

The County reserves the right to make award on all or part of the items to be purchased according to the best interest of the County. The Bidder may restrict their Quote to consideration in the aggregate by so stating in writing; provided, however the Bidder must also include a unit price on each price item set forth in the Quote Form.

## **V. Purchase Order Terms and Conditions**

The terms and conditions set out in **Attachment D**, "General Terms and Conditions" shall apply to this procurement and will become part of the Purchase Order issued for this procurement.

The Work to be performed will be financed by grant funds provided under the American Recovery and Reinvestment Act (ARRA), and as such are subject to the Terms and Conditions set forth in the grant agreements. Bidder should be aware that federal laws, regulations, policies, and related administrative practices applicable to the work may be modified from time to time. Bidder acknowledges that the most recent of such federal requirements will govern the resulting Contract at any particular time, unless the federal government determines otherwise. Likewise, new federal laws, regulations, policies and administrative practices may be established after the Contract is executed and may apply to the Contract. The laws and regulations detailed in **Attachment E**, to this RFQ include, but are not limited to, those that will be applicable to the Purchase Award.

## **VI. Tentative Schedule for Bidder Selection**

- January 10, 2013 Advertise RFQ
- January 16, 2013 Questions due to Purchasing Agent by 4:00 pm
- January 18, 2013 Answers to Questions Posted on Website by 4:00 pm
- January 24, 2013 Quotes Due by 3:00 pm
- March 15, 2013 Delivery of Product to Macon County Deadline

Please be aware that these dates and activities are subject to change.

## **VII. Addendum Procedures**

Any changes to this RFQ document will be made by addenda issued by the County. Upon issuance, the addenda will be considered part of the RFQ document and will prevail over inconsistent or conflicting provisions contained in the original RFQ document. Addenda will be available for download from the County website at <http://www.maconnc.org/public-notices.html>. E-mail notification of addenda will

also be sent to all Bidders who notify Lindsay McConnell, Purchasing Agent at [lmccconnell@maconnnc.org](mailto:lmccconnell@maconnnc.org).

Bidder shall acknowledge receipt of all addenda in their Quote Form (**Attachment C** to this RFQ). As with other required documentation, Quotes that fail to reference receipt of addenda as indicated may be excluded from further consideration.

A revised due date of Bidder's Quote (if applicable) shall be stated in each addendum.



## ATTACHMENT A

### Bus Shelter, Bench, Optional Trash Receptacle, and Optional Display Case Specifications

#### I. General Specifications

- Must comply with the most current accessibility requirements of the Americans with Disabilities Act (ADA).
- Must meet or exceed state and local performance standards for wind minimum 70 MPH and snow loads.

#### A. Standard Material Specifications

Materials shall meet the current requirement of the following organizations:

Stainless Steel	A.S.T.M
Aluminum	The Aluminum Association
Steel	American Institute of Steel Construction
Welding	American Welding Society
Galvanizing	Standard specification for Zinc (not galvanized) Coatings on structural Steel Shapes, Plates, and Bars
Glazing	American National Standards Institute (ANSI) for Architectural Glazing material Z97.1-1975

The Bidder, if requested by the County, will furnish an affidavit from the materials manufacturer, certifying that materials used meet the requirements specified.

The Bidder guarantees that the shelters provided are standard new product, made from regular stock materials; also, that no component or part has been substituted contrary to manufacturer's recommendations and standard practice.

#### B. Four (4) Bus Shelters

- Size shall be approximately 5' deep by 10' wide with 7' clearance height
- Fascia shall be 1 (one) piece 2½" high extruded aluminum with mitered corners, integral self-aligning attachment lip, two (2) corner key slots at each corner, internal gutter, and top and bottom edges rounded for safety
- Mitered corners shall be connected at outside corner with a ¼" thick aluminum angle and two (2) stainless steel Allen head set screws, and at

inside corner with two (2) 1/8" thick aluminum angle keys and concealed fasteners to prevent twist prior to installation

- The completed roof assembly shall be attached to shelter frame through self-alignment lip into header with aluminum and stainless steel tamper proof fasteners in shear
- Self-drilling or self-tapping fasteners in tension (or pull out condition) shall not be an acceptable method of securing roof assembly to frame.
- Exposed rivets at fascia corners are not acceptable.
- Fascia/gutter shall have a minimum 3" overhang on all sides.
- Fascia shall support a concentrated 300 lb load at mid-span without deformation
- Standing Seam Hip Roof shall be constructed using 30 degree pitch extruded base and an extruded ridge beam
- Rafters will be extruded aluminum tubes minimum 1" x 2" with a 1/8" wall thickness
- Rafters will interlock with the ridge and base extrusions
- Rafters are to be attached with concealed rivets. Attachment with self-drilling screws or sheet metal screws is not acceptable
- All roof sheet metal shall be Kynar 500 (or approved equal) pre-finished minimum .032" thick aluminum
- Standing Seam Hip Roof will be supported at each roof pan by a full rafter as described above, with no exposed fasteners on the underside of the roof
- Roof pans will be contained at the base in a "J" channel for a secure and finished appearance
- Roof designs that rely on the use of a purlin for support will not be acceptable
- Finished roof assembly shall be leak proof
- Roof shall be serviceable without removing fascia
- Drainage shall be directed to rear of shelter and away from shelter walls
- Roof shall not rely on self-tapping or self-drilling screws in tension for containment
- Roof and all metal surfaces finished in powder coat, in RAL color to be determined upon issue of Purchase Order, or equal
- Roof shall be shipped in a single complete section, ready for installation
- Roof shall be capable of supporting 40 lbs per square foot
- Adjustable shoes for surface mounting and leveling on concrete pad using anchor bolts
- Framing to be constructed of sufficient gauge, size and material for the application as determined by a qualified engineer

- Framing along with fasteners, shall be capable of meeting the requirements for wind and seismic loading in the service area of intended installation
- All framing joints to be coped and welded with no remaining sharp edges or other potential hazards to people
- Any framing fasteners used must be of stainless steel to resist rusting
- All structural frame connections shall be concealed
- Self-Tapping connectors will not be accepted
- Exposed fasteners shall match shelter finish
- Stainless steel fasteners (minimum ½" diameter) shall attach shelter to concrete pad
- Each shelter shall have one or two "eye hooks" (as deemed necessary by the Bidder) for easy lifting and balancing of the shelter with a crane
- Window frames shall be special "F" shaped aluminum extrusion with integral alignment lip and corner key slot
- All corners shall be mitered and reinforced with internal corner keys
- Window frames shall be affixed to shelter frame with 3/16" diameter aluminum flush break rivets approximately 13" on center
- No window frames shall be shipped loose or unattached to a wall module
- Window frame shall provide minimum ¾" engagement of glazing material on all sides
- Attachment to shelter wall frames shall be offset with no fasteners on the outside or inside face of the shelter frames.
- Smooth surfaces on top and bottom of ceiling
- Ceiling shall be of appropriate depth and length to fit shelter
- Coating/Finish shall be high gloss, anti-graffiti sealant to be applied on all surfaces in a single color to be decided by the County
- All exposed aluminum components including brackets, anchor boots, roof rafters, bench, etc. shall be anodized Architectural Class I finish in conformance with The Aluminum Association Designation System for Aluminum Finishes in a single color to be decided by the County
- Footing plates to be welded onto bottom of frame members with at least 2 holes in each plate for 1/2" diameter anchor bolts for mounting into concrete base.
- Standard design of the shelter shall enable the installation of the wall panels, leaving a 4" to 10" gap between the surface of the level concrete pad and the bottom framing. This allows free passage of debris
- All associated anchoring assemble and mounting hardware to install shelter onto a concrete pad

### C. Benches

- All shelters shall come with a partial length aluminum bench with backrest that mounts to the rear wall with brackets and stainless steel rivets – must match shelter finish
- Benches shall be delivered fully assembled
- The finish shall match the shelter and be warranted for a minimum of 3 years against lifting peeling or flaking
- A drawing signed by a qualified engineer must be included with the technical Quote.
- The frame must be made of sufficient gauge and size material for this application
- All joints to be coped and welded with no sharp edges or other potential hazards
- Length (end to end across top) - 4 feet minimum
- Space between end of bench and end far wall of shelter must meet ADA requirements for wheelchair accommodation

**D. Optional Trash Receptacles**

- The trash receptacles shall be curved trash receptacle
- The trash receptacles shall be at least 30 gallon with metal interior liner
- High-gloss, anti-graffiti sealant shall be applied on all surfaces of the trash receptacles in a single color to be decided by the County
- Trash Receptacles shall include all mounting and hardware to anchor the receptacles to a concrete pad
- The finish shall match the shelters with 3-year warranty against lifting, peeling and flaking

**E. Optional Display Case**

- 24" x 30" lockable display case with piano hinge
- ¼" clear acrylic
- Tamperproof hardware
- Shall match shelter finish

**F. Delivery**

Shelters should be delivered Monday through Friday between 8:00 a.m. and 3:30 p.m. to the following address:

Macon County  
Macon County Transit

36 Pannell Ln.  
Franklin, NC 28734

All shelters with amenities shall be delivered, FOB, Macon County, 36 Pannell Ln., Franklin, NC 28734. When installed, shall comply with the accessibility requirements of the Americans with Disabilities Act (ADA).

#### **H. Packaging and On-Site Assembly**

Macon County, at its discretion, may choose to have prefabricated shelters shipped in knock down condition for installation on a prepared concrete pad (or existing pavement of sufficient thickness and condition to meet engineered load requirements) using standard tools and equipment. Parts are to be clearly identified and complete instructions are to be provided.

All hardware is to be prepackaged in complete kits for each individual shelter (shelter, bench, and trash receptacles). Bulk packaging of hardware will not be acceptable. **Include delivery lead-time from receipt of written order.**

#### **I. Disadvantaged Business Enterprise (DBE)**

In an effort to meet Macon County's DBE Program objectives and the County's 0% federal DBE goal, this optional item provides opportunities for certified DBE firms to contract with or perform as a subcontractor and to provide goods and services to Macon County. DBEs must be currently certified under the North Carolina Department of Transportation's DBE Program in order to satisfy Macon County's program objectives and federal DBE goal. Certified DBEs, including minority-owned and women-owned businesses, are encouraged to respond to this solicitation directly or to partner with other firms.

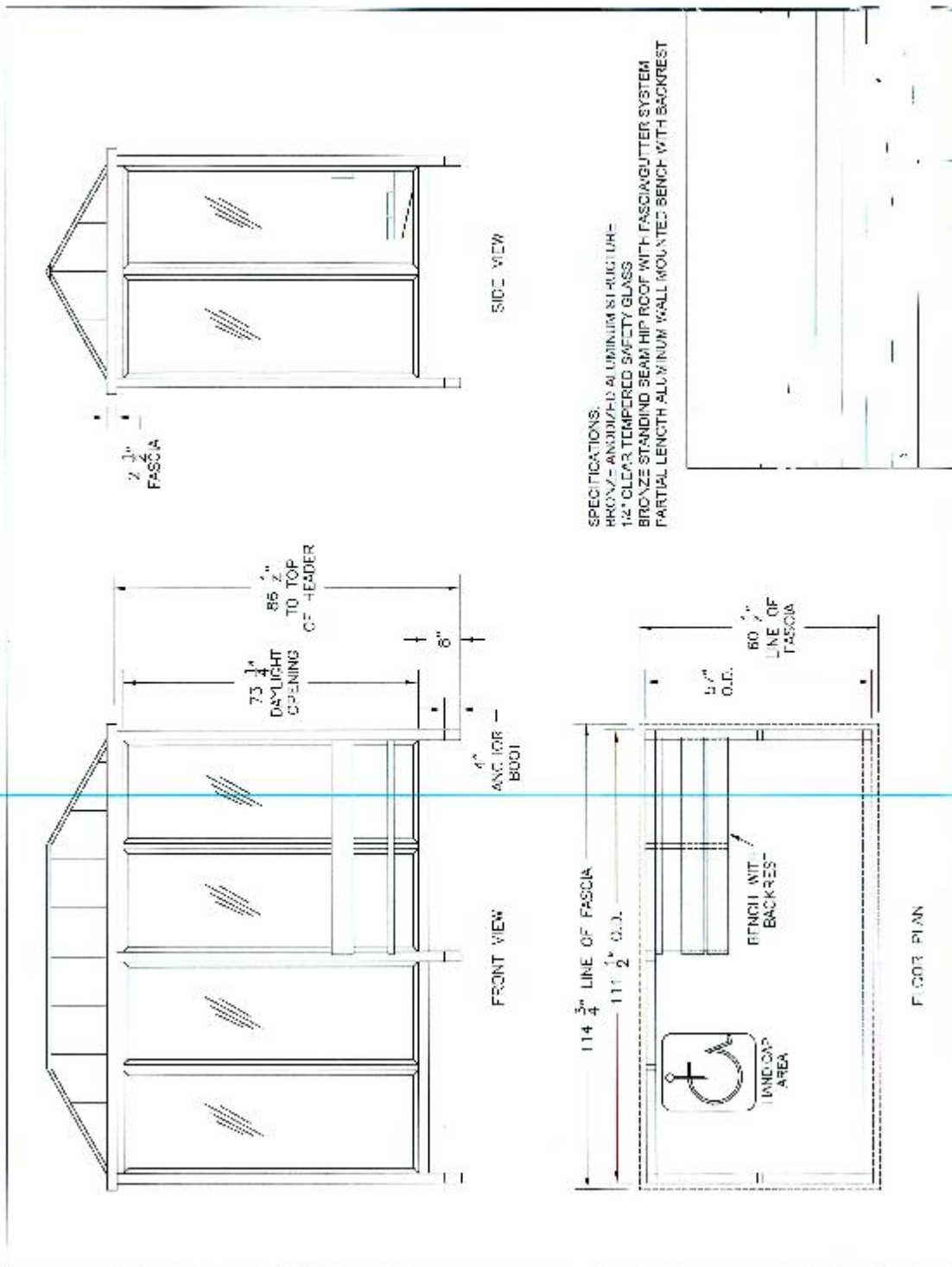
To obtain a listing of certified DBE firms or information about the North Carolina Department of Transportation's DBE Certification Program, contact:

North Carolina Department of Transportation  
Contractual Services Unit  
1509 Mail Service Center  
Raleigh, NC 27699-1509  
Phone (919) 707- 4810  
<https://partner.ncdot.gov/VendorDirectory/default.html>

## **ATTACHMENT B**

### **Shelter Sketch**

(SEE NEXT PAGE)



**ATTACHMENT C**  
**Quote Form**

To: Macon County  
Purchasing Agent  
5 West Main St.  
Franklin, NC 28734

From: \_\_\_\_\_

(Name of Contractor)

\_\_\_\_\_

(Street Address)

\_\_\_\_\_

(County, State and Zip)

\_\_\_\_\_

(e-mail and Phone)

RE: RFQ 03-4930i for Bus Shelters, Benches and Trash Receptacles

Date: \_\_\_\_\_

The Bidder certifies that he has examined and fully understands all of the provisions of the Request for Quotes (RFQ) and is satisfied that they are accurate; that he has carefully checked all numbers and statements made in this Quote; that he has satisfied himself with respect to the actual site conditions, nature and location of the Work; the general and local conditions to be encountered in the performance of the Work; other matters which in any way may affect the Work or the cost thereof; and that he has satisfied himself relative to the Work to be performed. Bidder hereby agrees that Macon County will not be responsible for any errors or omissions in the Quote.

By submitting this Quote, Bidder agrees that all information received by Macon County from Bidder, as a result of Macon County's Request for Quotes and subsequent thereto, shall become the property of Macon County, to be used and disclosed at its sole discretion without further obligation to Bidder, copyright or other restrictive legend notwithstanding.

The Bidder further proposes and agrees, if its Quote is accepted, to begin Work upon receipt of a Purchase Order, to furnish all necessary goods, materials, equipment,



machinery, tools, apparatus, means of transportation, and labor necessary to complete the Work in full and to complete and deliver it in accordance with the Specifications and Sketch included in the RFQ (**Attachments A and B**), to the full and entire satisfaction of Macon County for the unit price amount(s) set forth below. Bidder also understands that no money will be allowed or paid to Bidder for extra work except as authorized in writing by Macon County.

The undersigned hereby certifies that he/she is authorized to bind Bidder to this Quote and to a Purchase Award resulting there-from.

Bidder agrees that this Quote constitutes a firm offer to Macon County which cannot be withdrawn for sixty (60) calendar days following the Quote due date. Macon County reserves the right to reject any and all Quotes. No obligation, either expressed or implied, exists on the part of Macon County to make an award for the Work or for the cost incurred by Bidder in the preparation of the Quote.

Attached hereto and made a part of this Quote are the required Quote data and all other information which Bidder desires to be considered as part of this Quote. Bidder acknowledges that Macon County, at its option, may incorporate any of the information submitted by Bidder into a resulting Purchase Order.

Bidder acknowledges receipt of all Addenda to this RFQ (if any) or has attached a copy of all Addenda issued under this RFQ with this Quote.

This form constitutes the official Quote Form for Work to Macon County as set forth in this RFQ. Please provide the information requested and read and sign the certification below.

**Unit Prices / Delivery:**

Macon County intends to purchase four (4), standing seam hip roof passenger waiting shelters to include structural aluminum frames with glazed rear and side walls, roof assemblies, and all required hardware for installation, and four (4) benches. As an option, Macon County is asking for a price on four (4) trash receptacles and four (4) display cases.

1. Unit Prices for:
  - A. Bus Shelters \$ \_\_\_\_\_ EACH
  - B. Benches \$ \_\_\_\_\_ EACH

\*The unit price amounts listed above are firm and not subject to escalation.

2. Total cost for:
  - A. Four (4) Bus Shelters \$ \_\_\_\_\_
  - B. Four (4) Benches \$ \_\_\_\_\_
  - C. Delivery FOB destination \$ \_\_\_\_\_
  - D. Grand Total: \$ \_\_\_\_\_

\*Grand Total does not include sales tax.

3. Optional Items:
  - A. Four (4) Trash Receptacles \$ \_\_\_\_\_
  - B. Four (4) Ad Displays \$ \_\_\_\_\_
  - C. Delivery FOB destination \$ \_\_\_\_\_
  - D. Grand Total for Optional Items \$ \_\_\_\_\_

4. The Bidder will complete the Work and the bus shelter, benches and trash receptacles will be delivered to Macon County by \_\_\_\_\_.  
**Please state your best possible delivery date.**

5. Optional Price for Extended Warranty (if applicable)  
Does Bidder offer an extended warranty? \_\_\_\_\_

If so, state the duration or choices of durations and the price(s) for the extended warranty for each item on an attached sheet entitled "Extended Warranty Terms".

**Company Information:**

1. What is the legal name and address of your company?

\_\_\_\_\_

2. Is your company a sole proprietorship, partnership or corporation?

\_\_\_\_\_

If a corporation, list state where incorporated?

\_\_\_\_\_

3. Name the primary contact person that will be available to respond to questions or issues.

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

The undersigned acknowledges receipt of the following addenda (if applicable) issued prior to the due date of Quotes and includes the changes therein in this Quote:

Addendum Number \_\_\_\_\_ Date \_\_\_\_\_

Addendum Number \_\_\_\_\_ Date \_\_\_\_\_

Addendum Number \_\_\_\_\_ Date \_\_\_\_\_

**Execution of this Quote Form:**

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are Quote, at the prices set out in this Quote Form, within the time specified herein. By executing this Quote, I certify that this Quote is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owner of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

**Failure to execute/sign Quote prior to submittal shall render Quote invalid. Late Quotes are not acceptable.**

**Acceptance of Quote:**

If any or all parts of this Quote are accepted by Macon County, a Purchase Order shall be issued to the successful Bidder and this Quote Form, the Purchase Order, the provisions of

the RFQ, special terms and conditions specific to this RFQ, the specifications and the General Conditions shall then constitute the written agreement between the parties. An original complete RFQ and two (2) complete copies of the RFQ are required by the Quote date and time for review by Macon County.

The undersigned agrees that this Quote will not be withdrawn for a period of sixty (60) days.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
(Name of Firm or Corporation making Quote)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Intentionally left blank**

## ATTACHMENT D

### GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE AND REJECTION**: Macon County reserves the right to reject any and all Quotes, to waive any informality in Quotes, and unless otherwise specified by the Bidder, to accept any item in the Quote. If an error occurs in the unit price or extended price then unit price will prevail.
2. **TIME FOR CONSIDERATION**: Unless otherwise indicated in this document, the offer shall be valid for 60 days from the date of Quote opening. Preference may be given to Quotes allowing not less than 60 days for consideration and acceptance.
3. **TAXES**: No taxes shall be included in any Quote prices.
  - a. **FEDERAL**: Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code.
  - b. **OTHER**: Quote prices are not to include any sales, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s).
4. **PRICE ADJUSTMENTS**: Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the Bidder to other customers.
  - a. **NOTIFICATION**: Must be given to the Macon County Purchasing Department, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturers' official notice or other evidence that the change is general in nature.
  - b. **DECREASES**: Macon County shall receive full proportionate benefit immediately at any time during the contract period.
  - c. **INCREASES**: All prices offered herein shall be firm against any increase for 60 days from effective date of the purchase award. After this period, a request for increase may be submitted with the Macon County reserving the right to accept or reject the increase, or cancel the contract. Such action by the Macon County shall occur not later than 15 days after receipt and review by the Macon County of a properly documented request for price increase. Any increases accepted shall become effective on a date to be determined by the Macon County which:
    - 1) Shall not be later than 30 days after the expiration of the original 15 days reserved by the Macon County to evaluate the request for increase;

d. **INVOICES**: It is understood and agreed that orders will be shipped at the established purchase order prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the purchase award to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5. **PAYMENT TERMS**: Payment terms are net, 30 days after receipt of correct invoice or acceptance of goods, whichever is later. Macon County is responsible for all payments under the contract.

6. **AFFIRMATIVE ACTION**: The successful Bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

7. **CONDITION AND PACKAGING**: Unless otherwise indicated in the Quote, it is understood and agreed that any item offered or shipped on this Quote shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.

8. **SAMPLES**: Samples of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request, be returned at the Bidder's expense. Request for the return of samples must be made within 10 days following opening of Quotes. Otherwise the samples will become Macon County property. Each individual sample must be labeled with Bidder's name and item number. Samples, on which an award is made, will be retained for the contract period. These will be returned, if requested, ten days prior to expiration of the contract.

9. **SPECIFICATIONS**: Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful Bidder will be held responsible therefore. Deviations must be explained in detail on an attached sheet(s).

**The Bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

10. **SAFETY STANDARDS**: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the

American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the successful Bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All Bidders must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction Bidders must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, Bidders shall comply with all applicable occupational health and safety and environmental rules and regulations. Bidders shall effectively manage their safety and health responsibilities including:

**1. Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Bidder managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.

**2. Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

**3. Employee Education and Training**

Provide education and training to all Bidders employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

**11. INFORMATION AND DESCRIPTIVE LITERATURE**: Bidders are to furnish all information requested and in the spaces provided on the Quote form. Further, as may be specified elsewhere, each Bidder must submit with his Quote: cuts, sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous Quote does not satisfy this provision. Quotes, which do not comply with these requirements, will be subject to rejection.

**12. PROMPT PAYMENT DISCOUNTS**: Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

**13. AWARD OF PURCHASE**: Qualified quotes will be evaluated and acceptance made of the lowest, responsive quote most advantageous to the Macon County as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the Bidders; the substantial



conformity with the specifications and other conditions set forth in the Quote; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the County to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the County or the Bidder, the County reserves the right to accept any items or groups of items on a multi-item Quote.

The County reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the Macon County to be pertinent or peculiar to the purchase in question.

14. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this Quote prior to their delivery, it shall be the responsibility of the successful Bidder to notify the Macon County Purchasing Department at once, indicating in his letter the specific regulation which required such alterations. The Macon County reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

15. **M/WBE:** Pursuant to General Statute 143-48 and Executive Order #77, Macon County invites and encourages participation in this procurement process by businesses owned by minorities, women, and the handicapped.

16. **INSURANCE COVERAGE** - During the term of the contract, the Bidder at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Bidder shall provide and maintain the following coverage and limits:

**a. Worker's Compensation** - The Bidder shall provide and maintain the required Worker's Compensation Insurance, as well as employer's liability coverage with minimum limits of \$1,000,000.00 for bodily injury per accident. This insurance shall cover all Bidder's employees who are engaged in any work under the contract. If any work is sublet, the Bidder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

**b. General Liability** - General Liability Coverage with minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage. General aggregate limit shall apply separately to each project/location and limit shall not be less than the required occurrence limit. (Defense cost shall be in excess of the limit of liability.)

**c. Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$1,000,000.00 bodily injury and property damage.

Purchasing Agent reserves the right to waive any and all minimums.

**REQUIREMENTS:** Providing and maintaining adequate insurance coverage is a material obligation of the Bidder and is of the essence of this contract. Once the Quote is awarded the Bidder shall furnish the County with certificates of insurance and with original endorsements. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Bidder shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any of such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Bidder shall not be interpreted as limiting the Bidder's liability and obligations under the contract. It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to the Macon County Purchasing Department.

17. **PATENTS AND COPYRIGHTS:** The Bidder shall hold and save the Macon County, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses on account of any patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

Any and all copy, art, designs, negatives, photographs, or other tangible items created pursuant to Bidder's performance of this project shall be the property of Macon County and shall be delivered to County upon completion of the project. Such property shall be transferred to County in excellent, reusable condition.

In addition, the copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Bidder's performance of this project shall vest in the County, and the Bidder agrees to assign all rights therein to the County. Bidder further agrees to provide the County with any and all reasonable assistance, which the County may require to obtain copyright registrations or to perfect its title in any such work, including the execution of any documents submitted by the County.

18. **ADVERTISING**: Bidder agrees not to use the existence of this purchase award or the name of Macon County as a part of any commercial advertising without prior approval of the Macon County Purchasing Department.

19. **EXCEPTIONS**: All Quotes are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Bidder's response will be waived and have no effect on this Request for Quote or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Bidder may be grounds for rejection of the Bidder's Quote. The Bidder specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.

20. **CONFIDENTIAL INFORMATION**: As provided by statute and rule, the Macon County will consider keeping trade secrets which the Bidder does not wish DISCLOSED confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.

21. **ASSIGNMENT**: No assignment of the Bidder's obligations nor the Bidder's right to receive payment hereunder shall be permitted. However, upon written request approved by the Macon County Purchasing Department, solely as a convenience to the Bidder, Macon County may:

- a. Forward the Bidder's payment check directly to any person or entity designated by the Bidder, and
- b. Include any person or entity designated by Bidder as a joint payee on the Bidder's payment check.

In no event shall such approval and action obligate Macon County to anyone other than the Bidder and the Bidder shall remain responsible for fulfillment of all contract obligations.

22. **ACCESS TO PERSONS AND RECORDS**: The County Auditor shall have access to persons and records as a result of all contracts or grants entered into by the County in accordance with General Statute 147-64.7.

23. **INSPECTION AT BIDDER'S SITE**: Macon County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Bidder prior to contract award, and during the contract term as necessary for Macon County's determination that such equipment/item, plant or other facilities conform with the

specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

24. **AVAILABILITY OF FUNDS:** Any and all payments of compensation of this specific transaction, it's continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the County for the purpose set forth in this agreement.

25. **GOVERNING LAWS:** All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

26. **ADMINISTRATIVE CODE:** Quotes, Quotes, and awards are subject to applicable provisions of the North Carolina Administrative Code.

27. **EXECUTION:** Failure to sign under EXECUTION section will render Quote invalid.

28. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Quote, the order of precedence shall be (1) special terms and conditions specific to this Quote, (2) specifications, (3) Macon County General Contract Terms and Conditions, and (4) Macon County Quote Terms and Conditions.

29. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the Macon County Purchasing Department. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from the Macon County Purchasing Department. The Bidder is cautioned that the requirements of this Quote can be altered only by written addendum and that verbal communications from whatever source is of no effect.

30. **SITUS:** The place of all contracts, transactions, agreements, their suits and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Intentionally left blank**

**ATTACHMENT E**

**FEDERAL AND STATE REQUIREMENTS  
AND SPECIAL CONDITIONS**  
*for CONSTRUCTION*

1. **General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (18), dated October 1, 2011; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:  
"BIDDER" AND "CONTRACTOR"  
"PURCHASER", "PROCURING AGENCY" AND "OWNER"**

2. **Federal Changes**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

3. **Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this Quote, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, and 20.521. Federal funding assistance up to eighty (80%) percent may be provided. With ARRA funding up to 100% federal funding may be provided.

4. **Definitions**

*Third Party Agreement*, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

- (1) Third party contracts,
- (2) Leases,
- (3) Third party subcontracts; and
- (4) Other similar arrangements or agreements.

*Third Party Participant*, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

- (1) Third party contractors,
- (2) Lessees,
- (3) Third party subcontractors, and
- (4) Other participants in the Project

5. **Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

6. **Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or Quote for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

***The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.***

## **6. Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004, all amendments thereto.

a. This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)], and Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **8.6%**. A separate contract goal of **\_\_ % DBE participation** has been established for this construction procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Procuring Agency** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying a sealed Quote:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the Bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.



**Bidders/Offerors** must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Procuring Agency. In addition, these may apply:

- **the contractor may not hold retainage from its subcontractors; or**
- **is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or**
- **is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.**

d. The contractor must promptly notify the **Procuring Agency** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Procuring Agency**.

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and

## 8. **Civil Rights**

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

**(3) Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

**(4) Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972,

as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

**(5) Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.” 28 C.F.R. Part 36;
- (6) U.S. GSA regulations “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 49 C.F.R. Part 64, Subpart F;

- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) **Environmental Justice.** The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 9. **Clean Air Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended,

42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

10. **Clean Water Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. **Environmental Protection**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

12. **Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans

issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

### 13. **Recycled Products**

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all contractor and subcontractor tiers.

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

These items include, but may not be limited too:

***Paper and paper products***, excluding building and construction paper grades.

#### ***Construction products:***

- (a) Building insulation products, including the following items:
  - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
  - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
  - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
  - (4) Spray-in-place insulation, including but not limited to foam-in- place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block containing:

- (1) Coal fly ash;
- (2) Ground granulated blast furnace slag (GGBF);
- (3) Cenospheres; or
- (4) Silica fume from silicon and ferrosilicon metal production.
- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g) (1) Consolidated latex paint used for covering graffiti; and
  - (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

***Transportation products:***

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- (b) Parking stops made from concrete or containing recovered plastic or rubber.
- (c) Channelizers containing recovered plastic or rubber.
- (d) Delineators containing recovered plastic, rubber, or steel.
- (e) Flexible delineators containing recovered plastic.

***Miscellaneous products:***

- (a) Pallets containing recovered wood, plastic, or paperboard.
- (b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
- (c) Industrial drums containing recovered steel, plastic, or paper.
- (d) Awards and plaques containing recovered glass, wood, paper, or plastic.
- (e) Mats containing recovered rubber and/or plastic.
- (f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
  - (2) Sign supports and posts containing recovered plastic or steel.
- (g) Manual-grade strapping containing recovered steel or plastic.
- (h) Bike racks containing recovered steel or plastic.
- (i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

***Park and recreation products:***

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.
- (b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
- (c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
- (d) Playground equipment containing recovered plastic, steel, or aluminum.

***Landscaping products:***

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
- (b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.
- (e) Plastic lumber landscaping timbers and posts containing recovered materials.

***Non-paper office products:***

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.
- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.
- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.
- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.
- (l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

**14. Cargo Preference**

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

**15. Buy America**



The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than \$100,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Effective July 24, 1995 small purchases (under the \$100,000 threshold) made with FTA funds will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".**

*These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment B or C) with all Quotes where FTA funds are provided, except those subject to a general waiver or less than \$100,000.*

**QUOTES OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE QUOTE IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE QUOTE; ONLY ONE CERTIFICATION (either B or C) SHALL BE SUBMITTED.**

The certification requirement does not apply to lower tier subcontractors.

#### 16. **Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign

air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### 17. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Quote or proposal, the Bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency**. If it is later determined that the Bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT D (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

#### 18. **Termination or Cancellation of Contract**

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30-day notice of termination shall be required.

## 19. **Breach of Contract**

**Breach or Default** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Owner may terminate this contract for default. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Owner may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies the Owner in writing of the causes of delay. If in the judgment of the Owner, the delay is excusable, the time for completing the work shall be extended. The judgment of the Owner shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner.

The Owner in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case,

the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

## 20. **Resolution of Disputes**

*Disputes* - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the project. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the project. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the project shall be binding upon the Contractor and the Contractor shall aQuotee be the decision.

*Performance During Dispute* - Unless otherwise directed by project, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

*Claims for Damages* - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable timeafter the first observance of such injury of damage.

*Remedies* - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

*Rights and Remedies* - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, (Architect) or

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 21. **Protest Procedures**

To ensure that protests are received and processed effectively the Purchaser shall provide written Quote protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

## 22. **Davis-Bacon Act**

Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

### **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are

permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The [insert *name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert ***name of grantee***] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.



(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert ***name of grantee***] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage

rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and

journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with requirements of the Copeland "Anti-Kickback" Act, as amended - The contractor shall comply with the requirements of 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

23. **Contract Work Hours and Safety Standards Act**

Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

Pursuant to Section 102 (Overtime):

(These clauses are specifically mandated under DOL regulation 29 C.F.R. §5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously.)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The Owner/grantee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 3704, and applicable DOL regulations, "Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the

work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

24. **Project Labor Agreements (formerly Neutrality in Labor Relations)**

As a condition of contract award, the Owner may require a third party contractor or subcontractor to have an affiliation with a labor organization such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs & Annos., except as the Federal Government determines otherwise in writing.

25. **Geographic Preference**

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of Quotes or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

26. **No Federal Government Obligations to Third Parties**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

27. **False or Fraudulent Statements or Claims**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the

underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

28. **Exclusionary or Discriminatory Specifications or Requirements**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support sub-contracts using exclusionary or discriminatory specifications or requirements.

29. **Access to Records and Reports**

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.



The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. [http://www.records.ncdcr.gov/local/publicTransportationSystems\\_2006.pdf](http://www.records.ncdcr.gov/local/publicTransportationSystems_2006.pdf)

30. **Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

31. **Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

32. **Liquidated Damages**

Liquidated damages are a specific sum (or a sum readily determinable) of money stipulated by the contracting parties as the amount to be recovered for each day of

delay in delivery of the product; typically, the actual damage amount is unknown or difficult to estimate and is liquidated by the mutual agreement to the rate.

Any liquidated damages recovered shall be credited to the Project account involved unless the Federal Government permits otherwise.

33. **Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

34. **Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Purchaser or its agents who are involved in the delivery or processing of contractor goods to the Purchaser. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

35. **Safe Operation of Motor Vehicles**

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

- (1) “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. “Driving” does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

- (2) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

### 36. **National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455 *et seq.*,

January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*applicable to ITS projects*)

**37. North Carolina State Ethic's Requirement**

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

- 1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, Bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate Quoteding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

To be added near the signature portion of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

**38. Sensitive Security Information**

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

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**ATTACHMENT F**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY and VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTION  
*(To be submitted with all Quotes exceeding \$25,000.)***

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this Quote or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (2) The prospective Bidder/Contractor also certifies by submission of this Quote or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Quote or proposal.

The lower tier participant (Bidder/Contractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public \_\_\_\_\_

My Appointment Expires \_\_\_\_\_